

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

BRANDON CALLIER,

Plaintiff,

V.

POWUR, PBC INC dba POWUR, a Delaware Corporation

Defendant.

EP-23-cv-00302-KC

PLAINTIFF'S FIRST AMENDED COMPLAINT

COMES NOW Plaintiff Brandon Callier with his First Amended Complaint and will allege and show as follows:

PARTIES

1. Plaintiff BRANDON CALLIER (“Plaintiff”) is a natural person, a resident of the Western District of Texas, and was present in Texas for all automated text messages, in this case in El Paso County, Texas.
2. Defendant POWUR, PBC INC dba POWER (“Power”) is a corporation organized and existing under the laws of Delaware and can be served via registered agent INCORP Services Inc, 815 Brazos Street, STE 500, Austin, Texas 78701.
3. Non-named Defendant AK TELEMARKETING (“Offshore Telemarketer”) is an offshore telemarketing company based out of Bahria Town Islamabad, Pakistan operating from the website <https://aktelemarketing.pk.com>, with ashikiani22@gmail.com as the contact email address. Offshore Telemarketer placed the calls at issue on behalf of Defendant Powur.

4. Non-named Defendant ANONYMOUS TELEMARKETER NUMBER TWO (“Anonymous Telemarketer”) is a telemarketing company that made solicitation phone calls from phone number 209-457-2342 on behalf of Powur agents to solicit solar panels. Through information and belief this company is offshore and located in Pakistan.

JURISDICTION AND VENUE

5. Jurisdiction. This Court has federal-question subject matter jurisdiction over Plaintiff’s TCPA claims pursuant to 28 U.S.C. ¶ 1331 because the TCPA is a federal statute. *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372 (2012).

6. This Court has general personal jurisdiction over Defendant because Defendant maintains physical offices in Texas including in this very District.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1)-(2) because a substantial part of the events giving rise to the claims—the calls and sale of goods and services directed at Texas residents, including the Plaintiff—occurred in this District and because the Plaintiff resides in this District. Residing in the Western District of Texas when Plaintiff received every single unauthorized call from Defendants is the subject matter of this lawsuit.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991, 47 U.S.C. § 227

8. In 1991, Congress enacted the TCPA to restrict the use of sophisticated telemarketing equipment that could target millions of consumers *en masse*. Congress found that these calls were not only a nuisance and an invasion of privacy to consumers specifically but were also a threat to interstate commerce generally. *See* S. Rep. No. 102-178, at 2-3 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968, 1969-71.

9. The TCPA makes it unlawful “to make any call (other than a call made for emergency

purposes or made with the prior express consent of the called party) using an automatic telephone dialing system (“ATDS”) or an artificial or prerecorded voice ... to any telephone number assigned to a ... cellular telephone service.” 47 U.S.C. § 227(b)(1)(A)(iii).

10. The TCPA makes it unlawful “to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes, is made solely pursuant to the collection of a debt owed to or guaranteed by the United States or is exempted by rule or order” of the Federal Communication Commission (“FCC”). 47 U.S.C. § 227(b)(1)(B).

11. The TCPA provides a private cause of action to persons who receive calls in violation of § 227(b). 47 U.S.C. § 227(b)(3).

12. Separately, the TCPA bans telemarketing calls without a do-not-call policy available upon demand. 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(d)(1).¹

13. The TCPA provides a private cause of action to persons who receive calls in violation of § 227(c) or a regulation promulgated thereunder. 47 U.S.C. § 227(c)(5).

14. According to findings of the FCC, the agency vested by Congress with authority to issue regulations implementing the TCPA, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls and can be costly and inconvenient.

15. The FCC also recognizes that “wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.” *In re Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 18 FCC Rcd. 14014, 14115 ¶ 165 (2003).

16. The FCC requires “prior express written consent” for all autodialed or prerecorded telemarketing robocalls to wireless numbers and residential lines. In particular:[A] consumer’s

¹ See Code of Federal Regulations, Title 47, Parts 40 to 60, at 425 (2017) (codifying a June 26, 2003 FCC order).

written consent to receive telemarketing robocalls must be signed and be sufficient to show that the consumer: (1) received clear and conspicuous disclosure of the consequences of providing the requested consent, *i.e.*, that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates. In addition, the written agreement must be obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service.

17. *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 FCC Rcd. 1830, 1844 ¶ 33 (2012) (footnote and internal quotation marks omitted). FCC regulations “generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations.” *In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 10 FCC Rcd. 12391, 12397 ¶ 13 (1995).

18. The FCC confirmed this principle in 2013, when it explained that “a seller ... may be held vicariously liable under federal common law principles of agency for violations of either section 227(b) or section 227(c) that are committed by third-party telemarketers.” *In the Matter of the Joint Petition Filed by Dish Network, LLC*, 28 FCC Rcd. 6574, 6574 ¶ 1 (2013).

19. Under the TCPA, a text message is a call. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 951 – 52 (9th Cir. 2009).

20. A corporate officer involved in the telemarketing at issue may be personally liable under the TCPA. *E.g.*, *Jackson Five Star Catering, Inc. v. Beason*, Case No. 10-10010, 2013 U.S. Dist. LEXIS 159985, at *10 (E.D. Mich. Nov. 8, 2013) (“[M]any courts have held that corporate actors can be individually liable for violating the TCPA where they had direct, personal participation in or personally authorized the conduct found to have violated the statute.” (internal

quotation marks omitted)); *Maryland v. Universal Elections*, 787 F. Supp. 2d 408, 415 – 16 (D. Md. 2011) (“If an individual acting on behalf of a corporation could avoid individual liability, the TCPA would lose much of its force.”).

FACTUAL ALLEGATIONS

21. Plaintiff personally and successfully registered his phone number ending in 4604 to the National Do-Not-Call Registry (“DNC”) in December 2007.

22. Defendant Powur offers solar panel services.

23. Plaintiff received at least twenty-five (25) unauthorized calls to his personal cell phone ending in 4604 from Defendant Powur from May 2, 2023, to May 23, 2023, soliciting solar panel installation.

24. Plaintiff informed the overseas telemarketer on multiple occasions that he did not want solar panels and to stop calling.

25. Plaintiff received a series of telemarketing phone calls from an offshore telemarketer who identified himself as “Jordan.” Plaintiff has outlined each of the phone calls in Table A.

26. On or about September 2023 Plaintiff began to receive telemarketing phone calls from Anonymous Telemarketer soliciting solar panels. Plaintiff has outlined each of the phone calls in Table B.

27. The calls in Table A were placed by Offshore Telemarketer located in Pakistan. Offshore Telemarketer is beyond the reach of the laws of the United States.

28. The calls in Table B were placed by Anonymous Telemarketer located in Pakistan. Anonymous Telemarketer is beyond the reach of the laws of the United States.

29. The calls in Table C were placed directly to Plaintiff by authorized representatives and/or employees of Powur.

30. Defendant Powur, through its authorized representatives Jerell Mixon (“Mixon”), Luis Perez (“Perez”), Genesis Segovia (“Segovia”), Derrick Grant (“Grant”), Brain Farrell (“Farrell”), Kyle Braveman (“Braveman”), Jerrell Mixon (“Mixon”), Edward Zajac (“Zajac”), Bobby Smith (“Smith”), Robert Hall (“Hall”), and Eric Garcia (“Garcia”), Garrett Allred (“Allred”), together “Powur Sales Team,” hired Offshore Telemarketer and Anonymous Telemarketer to place phone calls to generate leads and set solar consultation appointments on behalf of Powur.

31. Powur equipped the Powur Sales Team with Powur websites and authorized the Powur sales team to use the Powur logo, Powur infrastructure, Powur software, and Powur proprietary information to market Powur products and services.

32. Powur provided Perez with the website <https://powur.com/luis.perez5>.

33. Powur provided Segovia with the website <https://powur.com/genessissegovia>.

34. Powur provided Grant with the website <https://powur.com/highpointsolar>.

35. Powur provided Farrell with the website <https://powur.com/brian.farrell>.

36. Powur provided Braveman with the website <https://powur.com/kyle.braveman>.

37. Powur provided Mixon with the website <https://powur.com/solarjerell>.

38. Powur provided Zajac with the website <https://powur.com/edzajac>.

39. Powur provided Smith with the website <https://powur.com/bobby.smith>.

40. Powur provided Hall with the website <https://powur.com/robt.hall>.

41. Powur provided Garcia with the website <https://powur.com/eric.garcia>.

42. Powur provided Allred with the website <https://powur.com/garrett.allred>.

43. Each of the websites in paragraphs 32-42 contains the trademarked Powur image registered with the United States Patent and Trademark Office: registration number 4892915, serial number 86672494.

44. Each of the websites in paragraphs 32-42 contains the trademarked Powur image registered with the United States Patent and Trademark Office: registration number 4893809, serial number 86672488,

45. Each of the websites in paragraphs 32-42 do not contain the word “independent.” None of the websites in paragraphs 32-42 call the Powur Solar Sales Team member “independent.”

46. Each of the websites in paragraphs 32-42 uses Powur’s name, image, and likeness, to market solar panels.

47. Powur has the ability to rescind the websites in paragraphs 32-42 without the consent of any of the Powur Sales Team members.

48. Powur’s websites do nothing to dissuade the notion that each of the Powur Sales Team members in paragraphs 32-42 are authorized Powur employees/agents and not independent contractors.

49. Calls 1- 24. From May 2, 2023, to May 23, 2023, Plaintiff received a series of phone calls soliciting solar panels. Each of these phone calls came from phone number 862-362-5001. The phone calls originated offshore from Pakistan.

50. On May 23, 2023, at 10:47 AM, Plaintiff received a phone call from phone number 862-362-5001 soliciting solar panels. Plaintiff set an appointment with the offshore telemarketer in order to determine who had hired the offshore telemarketer.

51. On May 23, 2023, at 10:57 AM Plaintiff received a phone from phone number 480-431-7017. Plaintiff answered the phone and Jerell Mixon was on the other end. Mixon confirmed the appointment set by the offshore telemarketer who called from phone number 862-362-5001.

52. On May 24, 2023, Plaintiff had a Zoom meeting with Mixon. During the meeting, Mixon asked Plaintiff whether the offshore telemarketer was courteous in setting the appointment.

53. On May 28, 2023, Plaintiff sent an email to Powur alerting them of the unwanted phone calls and requesting that the calls stop. Plaintiff has read receipt tracking on his email and was able to see that Powur read the email approximately 32 times.

54. Plaintiff similarly set appointments with each of the Powur Sales Team representatives in order to find out what company on whose behalf they were contacting Plaintiff.

55. Powur continued to call Plaintiff despite reading the DNC email 32 times.

56. Plaintiff received approximately 158 phone calls soliciting solar panels from Powur after Powur received Plaintiff's DNC request. Each of these 158 phone calls was a knowing and willful violation.

57. On August 4, 2023, Plaintiff received yet another phone call from phone number 862-362-5001. Plaintiff answered the phone and the Pakistani telemarketer solicited Plaintiff for solar panels. Plaintiff feigned interest in order to determine if it was Powur yet again soliciting Plaintiff.

58. The Pakistani telemarketer in paragraph 57 live transferred Plaintiff to Powur representative Luis Perez. There was no break in the call chain when Plaintiff was transferred to Perez. Perez confirmed a Zoom appointment with Plaintiff.

59. On August 7, 2023, Plaintiff had a Zoom appointment with Plaintiff. After the Zoom appointment, Perez emailed Plaintiff a copy of the solar proposal from Powur. The email began, "Hi Brandon, great talking to you today!"

60. Each and every call at issue in this Complaint is a solicitation call marketing solar panel installation.

61. On August 17, 2023, Plaintiff filed Complaint EP-23-cv-00302-KC in the Western District of Texas alleging TCPA violations by Powur.

62. On August 18, 2023, Plaintiff and Powur executed a Waiver of Service.

63. On August 20, 2023, Plaintiff emailed Powur attorney's and alerted them of the continuing phone calls being received by Plaintiff.

64. Powur responded on August 21, 2023, acknowledging receipt of the email in paragraph 63 and asked Plaintiff to let them know if Plaintiff was contacted again.

65. On August 25, 2023, Plaintiff received a phone call from phone number 862-362-5001. Plaintiff answered the phone call from Offshore Telemarketer and was live transferred to Grant who solicited Plaintiff for solar panels on behalf of Powur.

66. On August 25, 2023, Plaintiff sent Powur counsel an email and again alerted them of the unwanted phone calls. Plaintiff informed Powur Grant had contacted him on their behalf.

67. On August 28, 2028, Powur's counsel responded to Plaintiff's email from paragraph 66 and stated "Powur does not make outbound telemarketing phone calls" and to "Please do let me know if you are contacted again by others claiming to be affiliated with Powur." The implication being Powur was not affiliated with Derrick Grant.

68. Derrick Grant was provided by Powur with a website <https://powur.com/highpointsolar>.

69. Grant made eight (8) direct solicitation phone calls to Plaintiff after Plaintiff alerted the Powur counsel about the phone calls.

70. On or about September 2023 Plaintiff began to receive phone calls from phone number 209-457-2342. Through information and belief this company is located offshore in Pakistan. This company will hereinafter be referred to as "Anonymous Telemarketer.

71. Anonymous Telemarketer made 70 solicitation phone calls on behalf of Powur Sales Team representatives and scheduled appointments for Zajac, Garcia, and Smith. Anonymous Telemarketer may have scheduled appointments for additional Powur Sales Team members.

72. Anonymous Telemarketer made direct live transfers to multiple Powur representatives on solicitation phone calls.

73. Table A shows the calls sent to Plaintiff by Defendant Powur from Offshore Telemarketer.

TABLE A:

<u>Number</u>	<u>Date</u>	<u>Time</u>	<u>Caller ID</u>	<u>Notes</u>
1.	05/02/2023	11:26 AM	862-362-5001	Offshore telemarketer
2.	05/02/2023	11:27 AM	862-362-5001	Offshore telemarketer
3.	05/02/2023	12:51 PM	862-362-5001	Offshore telemarketer
4.	05/02/2023	10:06 PM	862-362-5001	Offshore telemarketer
5.	05/05/2023	2:24 PM	862-362-5001	Offshore telemarketer
6.	05/05/2023	2:24 PM	862-362-5001	Offshore telemarketer
7.	05/05/2023	2:24 PM	862-362-5001	Offshore telemarketer
8.	05/05/2023	2:24 PM	862-362-5001	Offshore telemarketer
9.	05/05/2023	2:24 PM	862-362-5001	Offshore telemarketer
10.	05/05/2023	2:25 AM	862-362-5001	Offshore telemarketer
11.	05/05/2023	4:17 PM	862-362-5001	Offshore telemarketer
12.	05/05/2023	4:18 PM	862-362-5001	Offshore telemarketer
13.	05/08/2023	11:16 AM	862-362-5001	Offshore telemarketer

14.	05/08/2023	11:16 AM	862-362-5001	Offshore telemarketer
15.	05/08/2023	12:15 PM	862-362-5001	Offshore telemarketer
16.	05/08/2023	12:16 PM	862-362-5001	Offshore telemarketer
17.	05/08/2023	12:20 PM	862-362-5001	Offshore telemarketer
18.	05/08/2023	12:57 PM	862-362-5001	Offshore telemarketer
19.	05/18/2023	12:05 PM	862-362-5001	Offshore telemarketer
20.	05/18/2023	12:05 PM	862-362-5001	Offshore telemarketer
21.	05/18/2023	12:59 PM	862-362-5001	Offshore telemarketer
22.	05/19/2023	4:41 PM	862-362-5001	Offshore telemarketer
23.	05/19/2023	4:41 PM	862-362-5001	Offshore telemarketer
24.	05/23/2023	10:47 AM	862-362-5001	Offshore telemarketer
25.	05/23/2023	10:57 AM	480-431-7017	Offshore telemarketer
	05/28/2023			Sent Demand Letter and DNC request
26.	06/07/2023	10:20 AM	862-362-5001	Offshore telemarketer
27.	06/07/2023	10:21 AM	862-362-5001	Offshore telemarketer
28.	06/12/2023	1:58 AM	862-362-5001	Offshore telemarketer
29.	06/12/2023	2:01 PM	862-362-5001	Offshore telemarketer

30.	06/21/2023	2:28 PM	862-362-5001	Offshore telemarketer
31.	06/22/2023	10:41 AM	862-362-5001	Offshore telemarketer
32.	06/22/2023	10:41 AM	862-362-5001	Offshore telemarketer
33.	06/22/2023	10:42 AM	862-362-5001	Offshore telemarketer
34.	06/22/2023	10:43 AM	862-362-5001	Offshore telemarketer
35.	06/22/2023	12:54 PM	862-362-5001	Offshore telemarketer
36.	06/23/2023	10:33 AM	862-362-5001	Offshore telemarketer
37.	06/25/2023	11:10 AM	862-362-5001	Offshore telemarketer
38.	06/26/2023	10:41 AM	862-362-5001	Offshore telemarketer
39.	06/26/2023	10:41 AM	862-362-5001	Offshore telemarketer
40.	06/26/2023	4:38 PM	862-362-5001	Offshore telemarketer
41.	07/05/2023	3:23 PM	862-362-5001	Offshore telemarketer
42.	07/06/2023	12:35 PM	862-362-5001	Offshore telemarketer
43.	07/07/2023	9:46 AM	862-362-5001	Offshore telemarketer
44.	07/07/2023	9:48 AM	862-362-5001	Offshore telemarketer
45.	07/07/2023	10:05 AM	862-362-5001	Offshore telemarketer
46.	07/07/2023	1:49 PM	862-362-5001	Offshore telemarketer
47.	07/07/2023	1:49 PM	862-362-5001	Offshore telemarketer
48.	07/10/2023	4:48 PM	862-362-5001	Offshore telemarketer

49.	07/18/2023	1:04 PM	862-362-5001	Offshore telemarketer
50.	07/22/2023	10:42 AM	862-362-5001	Offshore telemarketer
51.	07/25/2023	10:17 AM	862-362-5001	Offshore telemarketer
52.	07/31/2023	1:36 PM	862-362-5001	Offshore telemarketer
53.	08/01/2023	11:54 AM	862-362-5001	Offshore telemarketer
54.	08/01/2023	11:55 AM	862-362-5001	Offshore telemarketer
55.	08/01/2023	3:28 PM	862-362-5001	Offshore telemarketer
56.	08/01/2023	3:34 PM	862-362-5001	Offshore telemarketer
57.	08/01/2023	4:14 PM	862-362-5001	Offshore telemarketer
58.	08/01/2023	4:26 PM	862-362-5001	Offshore telemarketer
59.	08/02/2023	12:49 PM	862-362-5001	Offshore telemarketer
60.	08/03/2023	4:54 PM	862-362-5001	Offshore telemarketer
61.	08/04/2023	11:33 AM	862-362-5001	Offshore telemarketer
62.	08/04/2023	11:34 AM	862-362-5001	Offshore telemarketer
63.	08/04/2023	11:35 AM	862-362-5001	Offshore telemarketer
64.	08/07/2023	11:20 AM	862-362-5001	Offshore telemarketer
65.	08/07/2023	11:21 AM	862-362-5001	Offshore telemarketer
66.	08/07/2023	1:27 PM	862-362-5001	Offshore telemarketer

67.	08/07/2023	1:29 PM	862-362-5001	Offshore telemarketer
68.	08/07/2023	1:29 PM	862-362-5001	Offshore telemarketer
69.	08/07/2023	2:29 PM	862-362-5001	Offshore telemarketer
70.	08/07/2023	5:41 PM	862-362-5001	Offshore telemarketer
71.	08/07/2023	5:43 PM	862-362-5001	Offshore telemarketer
72.	08/07/2023	5:43 PM	862-362-5001	Offshore telemarketer
73.	08/07/2023	5:44 PM	862-362-5001	Offshore telemarketer
74.	08/08/2023	5:35 PM	862-362-5001	Offshore telemarketer
75.	08/08/2023	5:36 PM	862-362-5001	Offshore telemarketer
76.	08/10/2023	3:09 PM	862-362-5001	Offshore telemarketer
77.	08/10/2023	3:10 PM	862-362-5001	Offshore telemarketer
78.	08/11/2023	10:12 AM	862-362-5001	Offshore telemarketer
79.	08/11/2023	11:54 AM	862-362-5001	Offshore telemarketer
80.	08/14/2023	1:51 PM	862-362-5001	Offshore telemarketer
81.	08/16/2023	1:46 PM	862-362-5001	Offshore telemarketer
82.	08/16/2023	2:06 PM	862-362-5001	Offshore telemarketer
83.	08/16/2023	5:32 PM	862-362-5001	Offshore telemarketer
84.	08/25/2023	3:43 PM	862-362-5001	Offshore telemarketer
85.	08/25/2023	3:46 PM	862-362-5001	Offshore telemarketer

86.	08/28/2023	3:19 PM	862-362-5001	Offshore telemarketer
87.	08/28/2023	3:45 PM	862-362-5001	Offshore telemarketer
88.	08/28/2023	4:03 PM	862-362-5001	Offshore telemarketer
89.	08/28/2023	4:18 PM	862-362-5001	Offshore telemarketer
90.	08/28/2023	5:26 PM	862-362-5001	Offshore telemarketer

TABLE B – Calls from Anonymous Telemarketer

<u>Number</u>	<u>Date</u>	<u>Time</u>	<u>Caller ID</u>	<u>Notes</u>
1.	09/02/2023	1:03 PM	209-457-2342	Anonymous Telemarketer
2.	09/02/2023	2:05 PM	209-457-2342	Anonymous Telemarketer
3.	09/05/2023	12:03 PM	209-457-2342	Anonymous Telemarketer
4.	09/05/2023	2:22 PM	209-457-2342	Anonvmous Telemarketer
5.	09/06/2023	10:29 AM	209-457-2342	Anonvmous Telemarketer
6.	09/06/2023	10:31 AM	209-457-2342	Anonvmous Telemarketer
7.	09/06/2023	10:43 AM	209-457-2342	Anonvmous Telemarketer
8.	09/08/2023	11:23 AM	209-457-2342	Anonvmous Telemarketer
9.	09/08/2023	11:24 AM	209-457-2342	Anonvmous Telemarketer
10.	09/08/2023	11:24 AM	209-457-2342	Anonvmous Telemarketer

11.	09/09/2023	10:32 AM	209-457-2342	Anonvmous Telemarketer
12.	09/09/2023	10:36 AM	209-457-2342	Anonvmous Telemarketer
13.	09/09/2023	10:37 AM	209-457-2342	Anonvmous Telemarketer
14.	09/09/2023	3:10 PM	209-457-2342	Anonvmous Telemarketer
15.	09/09/2023	4:31 PM	209-457-2342	Anonvmous Telemarketer
16.	09/09/2023	4:36 PM	209-457-2342	Anonvmous Telemarketer
17.	09/10/2023	1:15 PM	209-457-2342	Anonvmous Telemarketer
18.	09/10/2023	1:15 PM	209-457-2342	Anonvmous Telemarketer
19.	09/10/2023	1:17 PM	209-457-2342	Anonvmous Telemarketer
20.	09/10/2023	2:12 PM	209-457-2342	Anonvmous Telemarketer
21.	09/10/2023	2:40 PM	209-457-2342	Anonvmous Telemarketer
22.	09/10/2023	3:08 PM	209-457-2342	Anonvmous Telemarketer
23.	09/10/2023	3:29 PM	209-457-2342	Anonvmous Telemarketer
24.	09/10/2023	3:36 PM	209-457-2342	Anonvmous Telemarketer
25.	09/12/2023	11:56 AM	209-457-2342	Anonymous Telemarketer
26.	09/12/2023	2:31 PM	209-457-2342	Anonvmous Telemarketer
27.	09/15/2023	2:55 PM	209-457-2342	Anonvmous Telemarketer
28.	09/15/2023	4:17 PM	209-457-2342	Anonvmous Telemarketer

29.	09/15/2023	2:37 PM	209-457-2342	Anonvmous Telemarketer
30.	09/16/2023	2:37 PM	209-457-2342	Anonvmous Telemarketer
31.	09/18/2023	3:56 PM	209-457-2342	Anonvmous Telemarketer
32.	09/19/2023	3:59 PM	209-457-2342	Anonvmous Telemarketer
33.	09/19/2023	4:36 PM	209-457-2342	Anonvmous Telemarketer
34.	09/20/2023	10:30 AM	209-457-2342	Anonvmous Telemarketer
35.	09/20/2023	10:31 AM	209-457-2342	Anonvmous Telemarketer
36.	09/20/2023	11:38 AM	209-457-2342	Anonvmous Telemarketer
37.	09/25/2023	2:34 PM	209-457-2342	Anonvmous Telemarketer
38.	09/25/2023	5:03 PM	209-457-2342	Anonvmous Telemarketer
39.	09/25/2023	5:45 PM	209-457-2342	Anonvmous Telemarketer
40.	09/26/2023	12:15 PM	209-457-2342	Anonvmous Telemarketer
41.	09/26/2023	1:20 PM	209-457-2342	Anonvmous Telemarketer
42.	09/26/2023	1:57 PM	209-457-2342	Anonvmous Telemarketer
43.	09/26/2023	3:37 PM	209-457-2342	Anonvmous Telemarketer
44.	09/26/2023	3:48 PM	209-457-2342	Anonvmous Telemarketer
45.	09/26/2023	4:09 PM	209-457-2342	Anonvmous Telemarketer
46.	09/26/2023	4:57 PM	209-457-2342	Anonvmous Telemarketer
47.	09/26/2023	5:03 PM	209-457-2342	Anonvmous Telemarketer

48.	10/12/2023	5:39 PM	209-457-2342	Anonvmous Telemarketer
49.	10/16/2023	9:13 AM	209-457-2342	Anonvmous Telemarketer
50.	10/18/2023	9:31 AM	209-457-2342	Anonvmous Telemarketer
51.	10/18/2023	10:15 AM	209-457-2342	Anonvmous Telemarketer
52.	10/18/2023	10:17 AM	209-457-2342	Anonvmous Telemarketer
53.	10/18/2023	2:38 PM	209-457-2342	Anonvmous Telemarketer
54.	10/18/2023	3:37 PM	209-457-2342	Anonvmous Telemarketer
55.	10/18/2023	4:17 PM	209-457-2342	Anonvmous Telemarketer
56.	10/19/2023	2:26 PM	209-457-2342	Anonvmous Telemarketer
57.	10/19/2023	2:56 PM	209-457-2342	Anonvmous Telemarketer
58.	10/19/2023	3:12 PM	209-457-2342	Anonvmous Telemarketer
59.	10/19/2023	3:19 PM	209-457-2342	Anonvmous Telemarketer
60.	10/19/2023	3:26 PM	209-457-2342	Anonvmous Telemarketer
61.	10/19/2023	3:34 PM	209-457-2342	Anonvmous Telemarketer
62.	10/19/2023	3:39 PM	209-457-2342	Anonvmous Telemarketer
63.	10/19/2023	3:40 PM	209-457-2342	Anonvmous Telemarketer
64.	10/19/2023	4:04 PM	209-457-2342	Anonvmous Telemarketer
65.	10/19/2023	4:15 PM	209-457-2342	Anonvmous Telemarketer
66.	10/19/2023	4:53 PM	209-457-2342	Anonvmous Telemarketer

67.	10/19/2023	5:08 PM	209-457-2342	Anonvmous Telemarketer
68.	10/19/2023	5:48 PM	209-457-2342	Anonvmous Telemarketer
69.	10/19/2023	5:57 PM	209-457-2342	Anonvmous Telemarketer
70.	10/20/2023	9:57 PM	209-457-2342	Anonvmous Telemarketer

TABLE C – DIRECT CALLS FROM POWUR

<u>Number</u>	<u>Date</u>	<u>Time</u>	<u>Caller ID</u>	<u>Notes</u>
1.	05/11/2023	1:27 PM	732-575-2007	Robert Hall
2.	05/12/2023	8:12 AM	732-575-2007	Robert Hall
3.	05/23/2023	10:57 AM	208-602-9679	Ierrell Mixon
4.	05/23/2023	1:01 PM	856-505-9559	Ierrell Mixon
5.	05/23/2023	1:02 PM	732-575-2007	Ierrell Mixon
6.	05/25/2023	5:21 PM	732-575-2007	Ierrell Mixon
7.	05/25/2023	5:21 PM	732-575-2007	Ierrell Mixon
8.	08/01/2023	4:04 PM	208-602-9679	Garrett Allred
9.	08/07/2023	10:10 AM	208-602-9679	Garrett Allred
10.	08/07/2023	10:14 AM	208-602-9679	Garrett Allred
11.	08/19/2023	4:41 PM	856-505-9559	Derrick Grant

5.	08/19/2023	5:46 PM	856-505-9559	Derrick Grant
6.	08/19/2023	6:36 PM	856-505-9559	Derrick Grant
7.	08/20/2023	1:01 PM	856-505-9559	Derrick Grant
8.	08/21/2023	11:56 AM	856-505-9559	Derrick Grant
9.	08/26/2023	1:19 PM	856-505-9559	Derrick Grant
10.	08/26/2023	1:20 PM	856-505-9559	Derrick Grant
11.	08/26/2023	1:35 PM	856-505-9559	Derrick Grant
12.	08/26/2023	4:55 PM	856-505-9559	Derrick Grant
13.	08/28/2023	8:28 PM	856-505-9559	Derrick Grant
14.	08/31/2023	12:22 PM	856-505-9559	Derrick Grant
15.	08/28/2023	8:28 PM	856-505-9559	Derrick Grant
16.	08/31/2023	12:22 PM	856-505-9559	Derrick Grant
17.	09/07/2023	10:00 AM	631-680-1135	Edward Zaiac
18.	09/08/2023	12:52 PM	631-680-1135	Edward Zaiac
19.	09/13/2023	10:27 PM	856-505-9559	Derrick Grant
20.	09/13/2023	12:53 PM	631-680-1135	Edward Zaiac
21.	10/11/2023	1:58 PM	210-952-8664	Eric Garcia
22.	10/14/2023	7:01 PM	210-952-8664	Eric Garcia
23.	10/14/2023	7:01 PM	210-952-8664	Eric Garcia

74. Plaintiff did not have a preexisting relationship with Defendant, had never been a customer of Defendant nor had ever applied for solar panels or any other accounts with Defendant.

75. Defendant placed multiple unauthorized phone calls to Plaintiff within a twelve-month period to Plaintiff's residential phone line, listed on the National DNC registry since 2007, which violated 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200(c).

76. No emergency necessitated any of the alleged calls.

77. Plaintiff has limited data storage capacity on his cellular telephone. Incoming telemarketing calls consumed part of this capacity.

**VICARIOUS LIABILITY OF DEFENDANT FOR THE ACTIONS OF THE POWUR
SALES TEAM**

78. Defendant Powur through their authorized representatives Mixon, Perez, Garcia, Smith, Farrell, Zajac, Braveman, Grant, Segovia, Allred, and Hall made unauthorized solicitation phone calls to Plaintiff on their behalf.

79. To the extent Powur attempts to argue that Mixon, Perez, Garcia, Smith, Farrell, Zajac, Braveman, Grant, Grant, Segovia, Allred and Hall are "Independent Solar Consultants," this is refuted by the emails Plaintiff received directly from Powur from email address support@Powur.com and email address salesupport@powur.com.

80. On May 11, 2023, Plaintiff received phone calls from Robert Hall ("Hall") from phone number 732-575-2007 soliciting Plaintiff for solar panels. Hall has an email address of rhall@visionsolar.com and website <https://powur.com/robt.hall>.

81. On May 25, 2023, Powur sent Plaintiff an email from salesupport@powur.com. This

email stated that Jerell Mixon was part of the Powur team and asked Plaintiff to contact Mixon. The email listed Mixon's phone number (480-431-7017), email address (solarjerell@gmail.com), and website <https://powur.com/solarjerell>. Exhibit A.

82. On June 24, 2023, Powur sent Plaintiff an email from salesupport@powur.com. This email stated that Genesis Segovia was part of the Powur team and asked Plaintiff to contact Segovia. The email listed Segovia's phone number (210-781-1349), email address (genesis.solarlife@gmail.com), and website <https://powur.com/genesissegovia>. Exhibit B

83. On July 8, 2023, Powur sent Plaintiff an email from salesupport@powur.com. This email stated that Kyle Braveman was part of the Powur team and asked Plaintiff to contact Braveman. The email listed Braveman's phone number (401-497-2665), email address (kbraveman@accreditedsolaradvisors.com), and website <https://powur.com/kylebraveman>. Exhibit C.

84. On August 2, 2023, Powur sent Plaintiff an email from salesupport@powur.com. This email stated that Brian Farrell was part of the Powur team and asked Plaintiff to contact Farrell. The email listed Farrell's phone number (727-902-5303), email address (solarwithrobsantiago@gmail.com), and website <https://powur.com/rob.santiago>. Exhibit D

85. On August 5, 2023, Powur sent Plaintiff an email from salesupport@powur.com. This email stated that Luis Perez was part of the Powur team and asked Plaintiff to contact Perez. The email listed Farrell's phone number (626-409-5866), email address (luisperezlimitless@gmail.com), and website <https://powur.com/luis.perez5>. Exhibit E

86. On August 7, 2023, Garrett Allred ("Allred") sent Plaintiff phone calls from phone number 208-602-9679 soliciting Plaintiff for solar panels. Allred has an email address of garrettallred4x5@gmail.com and website <https://powur.com/garrett.allred>.

87. On August 21, 2023, Powur sent Plaintiff an email from salesupport@powur.com. This email stated that Derrick Grant was part of the Powur team and asked Plaintiff to contact Grant.

The email listed Grant's phone number (856-505-9559), email address (derricktheprofit@gmail.com), and website <https://powur.com/highpointsolar>. Exhibit F

88. On September 8, 2023, Powur sent Plaintiff an email from salesupport@powur.com.

This email stated Ed Zajac was part of the Powur team and asked Plaintiff to contact Zajac. The email listed Zajac's phone number (631-680-1135), email address (ed@bcras.com), and website <https://powur.com/edzajac>. Exhibit G.

89. On October 7, 2023, Plaintiff received phone calls and text messages from Bobby Smith ("Smith") from phone number 410-977-8777 soliciting Plaintiff for solar panels. Smith has an email address of bobby.smith@powur.com and website <https://powur.com/bobby.smith>.

90. On October 11, 2023, Plaintiff received phone calls and text messages from Eric Garcia ("Garcia") from phone number 210-952-8664 soliciting Plaintiff for solar panels. Garcia has an email address of solarmastermind@gmail.com and website <https://powur.com/eric.garcia>.

91. The Powur Sales Team had apparent authority to market Powur solar panels and services.

92. The Powur Sales Team had the authority to use Powur's website, Powur's logo, and Powur's hardware and software.

93. The Powur Sales Team had the ability to enter customer's information directly into Powur's sales and customer systems to generate quotes and marketing presentations.

94. The Powur Sales Team was provided with a company-based website in which the Powur advertised the Powur trademark and trade name.

95. Powur, and the Powur Sales Team, from the start of the marketing campaign to the end of the marketing campaign, left no room for any conclusion other than the Powur Sales Team were

acting for and at the direction of Powur.

96. Through information and belief, The Powur Sales Team hired the telemarketers in this case. The telemarketers were the agents of the Powur Sales Team and the subagent of Powur.

97. Given the fact at least eleven (11) different Powur representatives that contacted Plaintiff as a direct result of the same two telemarketers making phone calls to Plaintiff, it is plausible that Powur directly hired the telemarketers for the benefit of their Powur Sales Team.

98. The Powur Sales Team instructed the telemarketers not to reveal the identity of the Powur Sales Team when making appointments resulting in Plaintiff having to take reasonable steps to uncover the company on whose behalf the calls were being made.

**INJURY, HARM, DAMAGES, AND ACTUAL DAMAGES AS A RESULT OF THE
CALLS**

99. Defendant's calls harmed Plaintiff by causing the very harm that Congress sought to prevent—a "nuisance and invasion of privacy."

100. Defendant's calls harmed Plaintiff by trespassing upon and interfering with Plaintiff's rights and interests in Plaintiff's cellular telephone.

101. Defendant's calls harmed Plaintiff by intruding upon Plaintiff's seclusion.

102. Plaintiff has been harmed, injured, and damaged by the calls including, but not limited to: reduced device storage, reduced data plan usage, anger, frustration, invasion of privacy, and more frequent charging of his cell phone.

PLAINTIFF'S CELL PHONE IS A RESIDENTIAL NUMBER

103. The calls were to Plaintiff's personal cell phone ending in 4604 which he uses for personal, family, and household use. Plaintiff maintains no landline phones at his residence and has not done so for at least 16 years and primarily relies on cellular phones to communicate with

friends and family. Plaintiff also uses his cell phone for navigation purposes, sending and receiving emails, timing food when cooking, and sending and receiving text messages. Plaintiff further has his cell phone registered in his personal name, pays for the cell phone from his personal accounts, and the phone is not primarily used for any business purpose.

COUNT ONE:

(Violation of the TCPA “Sales Call/DNC” Prohibition, 47 U.S.C. 227(c), and 47 C.F.R. § 64.1200(C))

104. Plaintiff incorporates the preceding paragraphs 1-103 as if fully set forth herein.

105. The foregoing acts and omissions of Defendant Powur and/or their affiliates or agents constitute a violation of FCC regulations by making multiple telemarketing solicitations to a consumer on the National Do-Not-Call Registry within a 12-month period in violation of 47 C.F.R. § 64.1200(c)(2).

106. Defendant Powur and/or their agents, called Plaintiff’s private residential telephone which was successfully registered on the National Do-Not-Call Registry more than thirty-one (31) days prior to the alleged calls, in violation of 47 U.S.C § 227(c)(3)(F), and 47 C.F.R. § 64.1200(c)(2).

107. Plaintiff was statutorily damaged at least sixty-three (63) times under 47 U.S.C. § 227(c)(3)(F) by Defendant Powur’s calls described above, in the amount of \$500 per call.

108. Plaintiff is entitled to an award of at least \$500 in damages for each such violation. 47 U.S.C. § 227(c)(5)(B).

109. Plaintiff is entitled to an award up to \$1,500 in damages for each knowing or willful violation of 47 U.S.C. § 227(c)(3)(F).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Brandon Callier prays for judgment against the Defendants jointly and severally as follows:

- A. Leave to amend this Complaint to name additional DOESs as they are identified and to conform to the evidence presented at trial;
- B. A declaration that actions complained of herein by Defendant violates the TCPA and Texas state law;
- C. An injunction enjoining Defendants and their affiliates and agents from engaging in the unlawful conduct set forth herein;
- D. An award of \$1,500 per call in statutory damages arising from the TCPA §227(c) intentional violations jointly and severally against Defendants for One hundred eighty-three (183) calls;
- E. An award to Mr. Callier of damages, as allowed by law under the TCPA;
- F. An award to Mr. Callier of interest, and costs, as allowed by law and equity;
- G. Such further relief as the Court deems necessary, just, and proper;

November 3, 2023,

Respectfully submitted,

Brandon Callier
Plaintiff, Pro Se
6336 Franklin Trail
El Paso, TX 79912
915-383-4604
Callier74@gmail.com



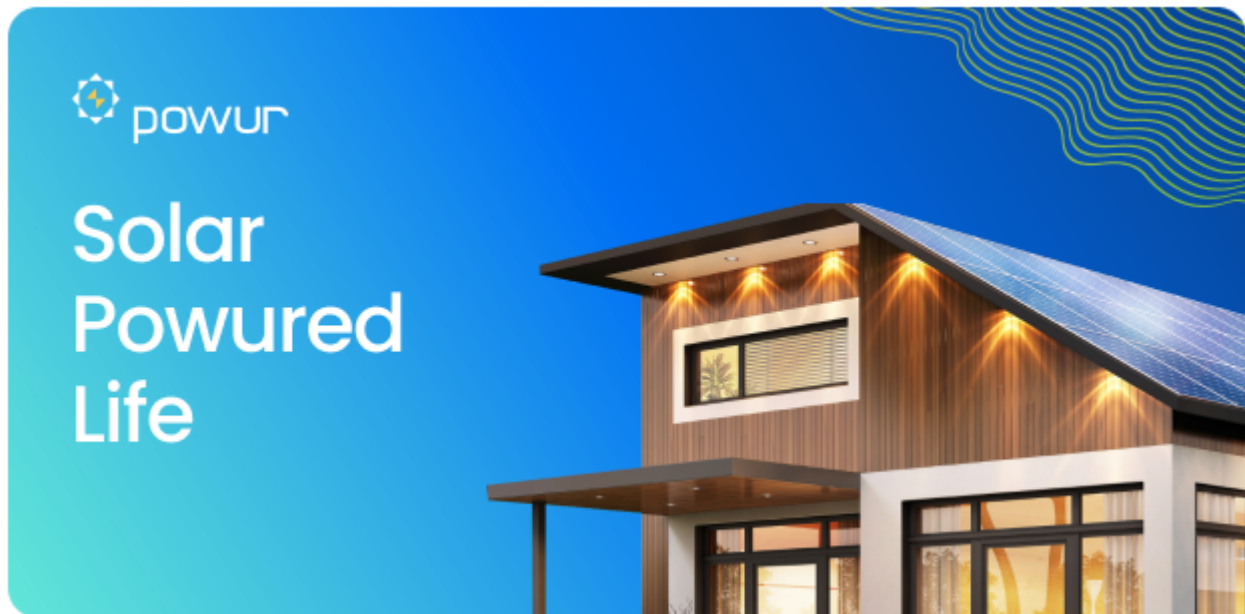
Brandon Callier <callier74@gmail.com>

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1 message

Powur <salessupport@powur.com>
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Thu, May 25, 2023 at 12:41 PM



Hey Brandon,

There's a reason why so many homeowners choose Powur. As the fastest growing residential solar company in the US, Powur gives you greater long-term savings, control, and peace of mind than any other option.

Working with Powur is easy — and better for the planet. Here are even more reasons to feel good about going solar with Powur.

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Satisfaction. Don't just take our word for it. Powur is a Certified B Corp with a BBB A+ rating and has earned a spot on the Inc. 5000 list of fastest growing companies three years running, showing our commitment to putting customers and the planet first.



Experienced, local experts. With more than 11,000 installs and counting, our local technicians have the expertise needed to set up the best quality solar systems with the lowest carbon footprint.



Increased savings. Our sellers take the time to create a fully customized solar plan, helping you save as much as possible.



Environmental impact. We're serious about giving back. Our carbon offset program and reforestation efforts in the Amazon rainforest create a cleaner, greener planet.



Flexibility. Whether you choose zero-down financing, a low-interest loan, or cash payment, you'll always find flexible financing, equipment, and storage options.



Peace of mind. Gain confidence and protection with our complete coverage, 30-year solar warranty.

It's time for you to start saving money with clean, renewable energy. Contact Jerell Mixon to begin your journey today!

The Powur Team



Independent Solar Consultant

Jerell Mixon

Telephone #: (480) 431-7017

Email: solarjerell@gmail.com

Website: <https://powur.com/solarjerell>



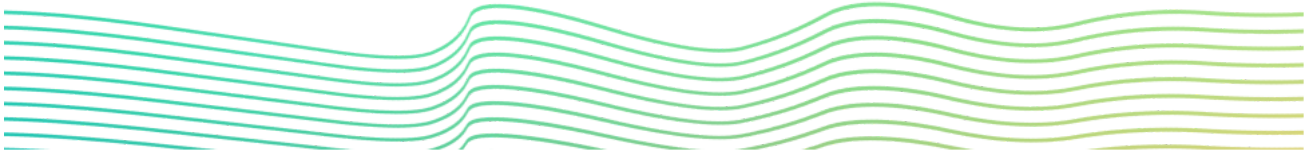
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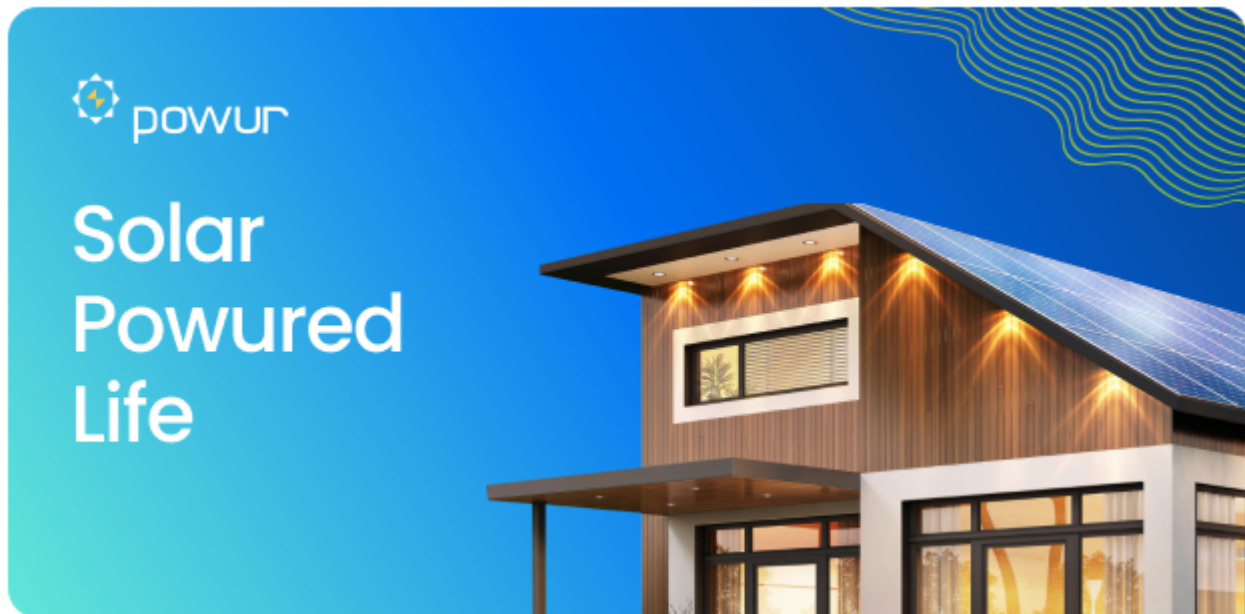
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Sat, Jun 24, 2023 at 7:50 AM



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The Powur Team



Independent Solar Consultant

Genesis Segovia

Phone: [\(210\) 781-1349](tel:(210)781-1349)

Email: genesis.solarlife@gmail.com

Website: <https://powur.com/genessissegovia>



If you have questions or need help, don't hesitate to contact our support team!

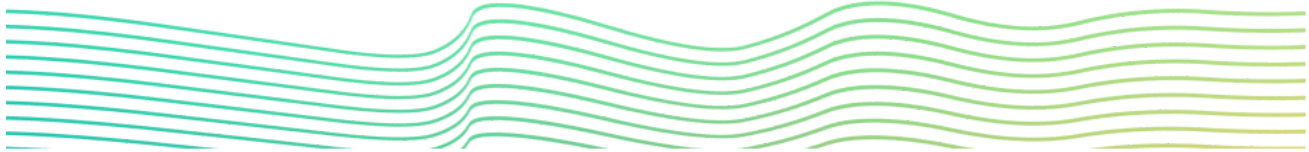
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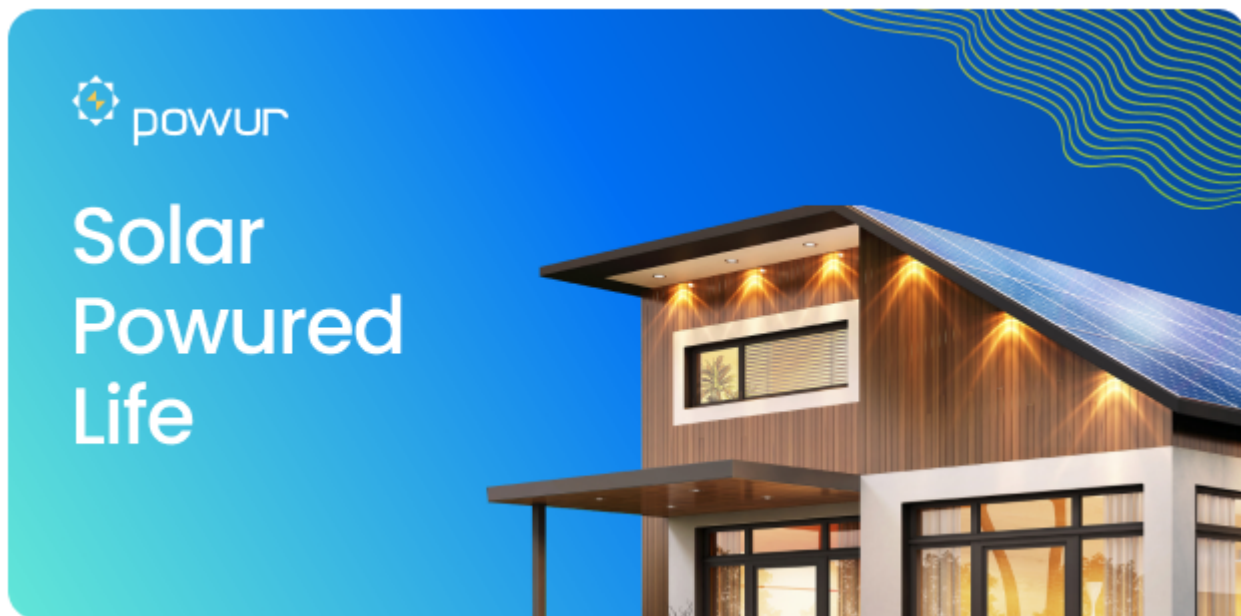
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Sat, Jul 8, 2023 at 3:46 PM



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The Powur Team



Independent Solar Consultant

Kyle Braveman

Phone: [\(401\) 497-2665](tel:(401)497-2665)

Email: kbraveman@accreditedsolaradvisors.com

Website: <https://powur.com/kyle.braveman>



If you have questions or need help, don't hesitate to contact our support team!

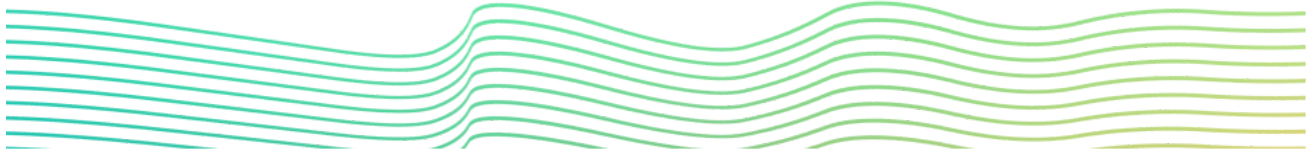
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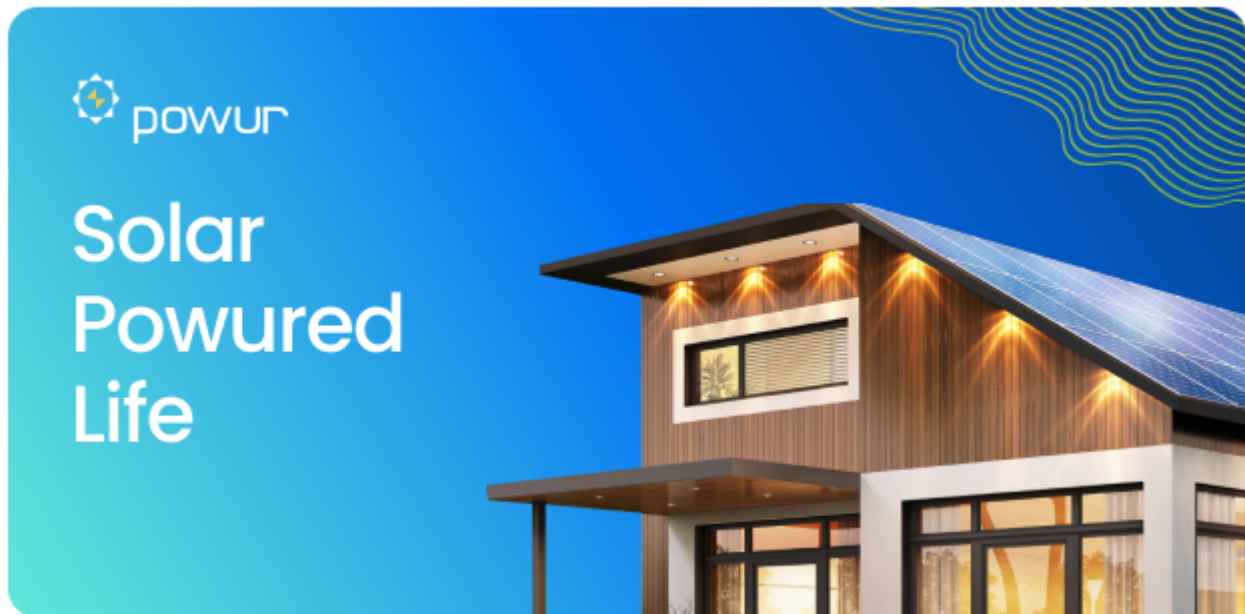
Brandon Callier <callier74@gmail.com>

Act Now Before Your Proposal Expires!

1 message

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Reply-To: Powur <salessupport@powur.com>
To: callier74@gmail.com

Wed, Aug 2, 2023 at 9:15 AM



Hey Brandon,

You have your fully customized solar proposal in hand, and ***now is the time to act!*** Your offer expires in just two days, and after that point, prices are subject to change.

Don't miss out on the chance to save money, gain energy independence, and add value to your home.

By sticking with your current utility, you're opting for unpredictable rates and no added home value. Go solar, and you'll gain long-term savings that promote a greener planet — all with zero out-of-pocket costs.

Lock into your solar pricing before it's too late. Contact Brian Farrell now to seal the deal.

The Powur Team

Ready to Move Forward? Contact Your Powur Team Today!



Independent Solar Consultant

Rob Santiago Cosme

Phone: [\(727\) 902-5303](tel:(727)902-5303)

Email: solarwithrobsantiago@gmail.com

Website: <https://powur.com/rob.santiago>



If you have questions or need help, don't hesitate to contact our support team!

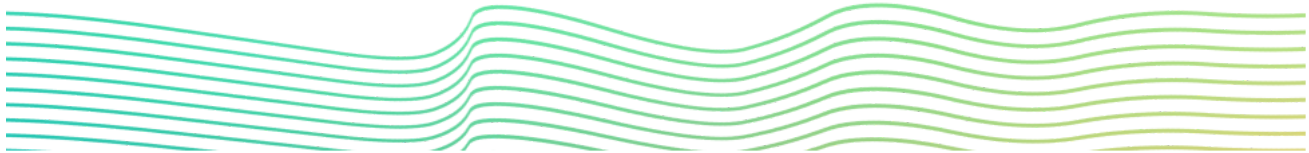
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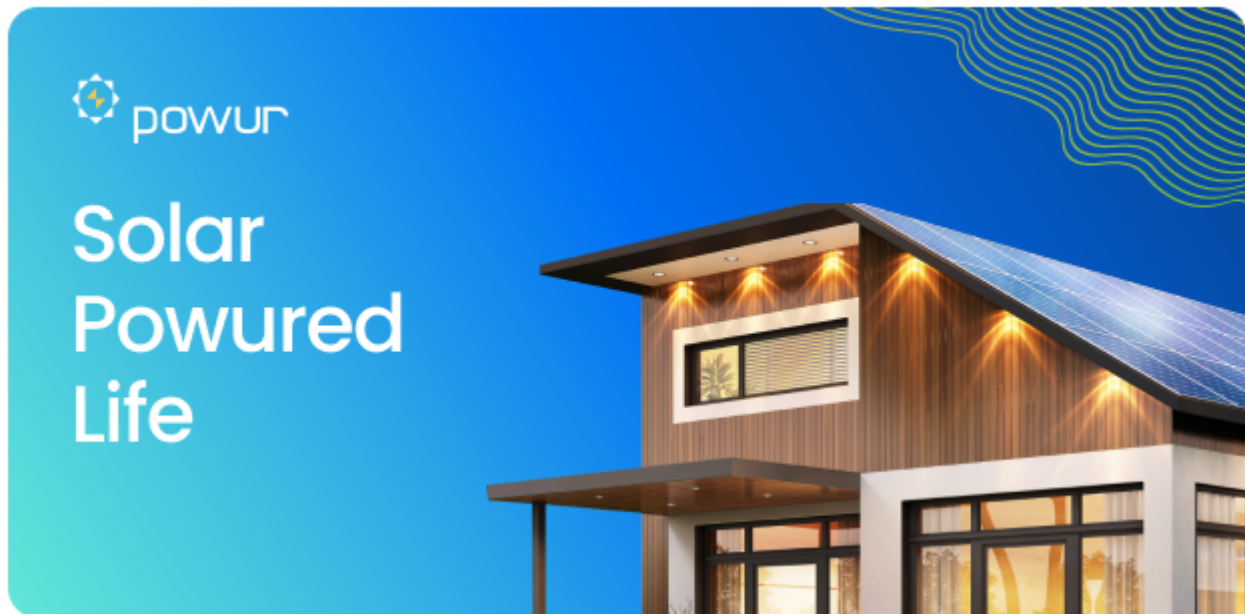
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To: callier74@gmail.com

Sat, Aug 5, 2023 at 10:51 AM



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The Powur Team



Independent Solar Consultant

Luis Perez

Phone: [\(626\) 409-5866](tel:(626)409-5866)

Email: luisperezlimitless@gmail.com

Website: <https://powur.com/luis.perez5>



If you have questions or need help, don't hesitate to contact our support team!

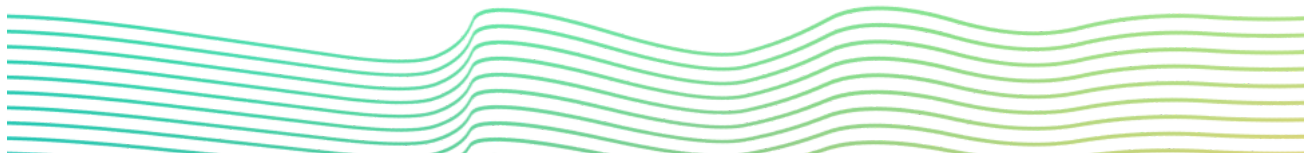
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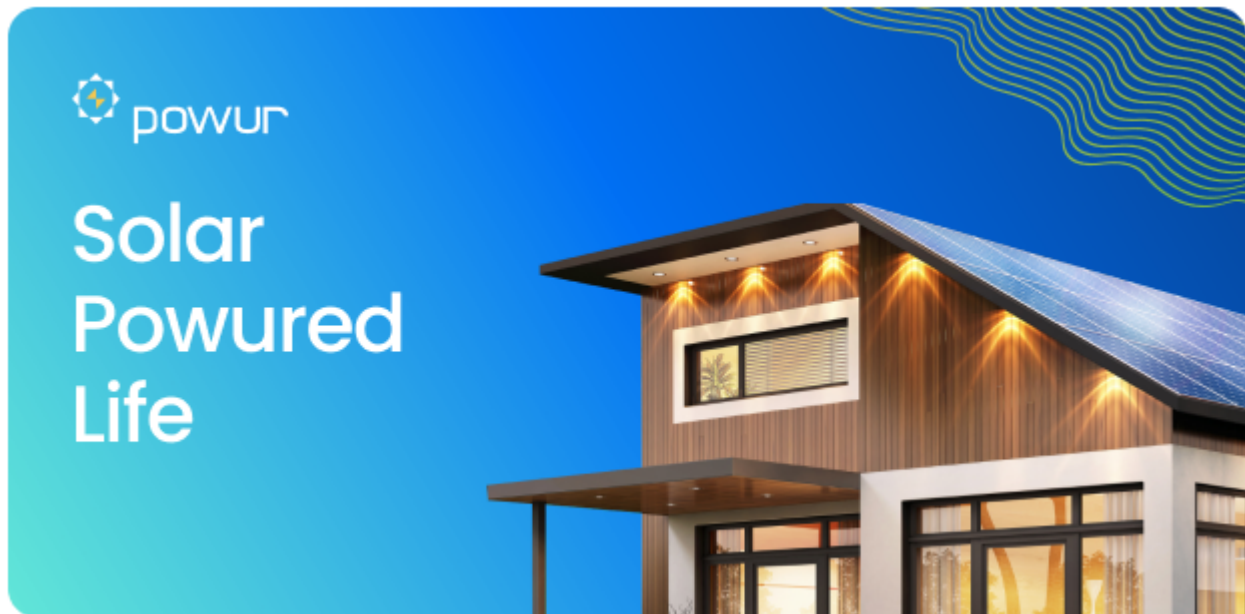
Brandon Callier <callier74@gmail.com>

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Mon, Aug 21, 2023 at 8:47 AM



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Peace of mind. Gain confidence and protection with our complete coverage, 30-year solar warranty.

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The Powur Team



Independent Solar Consultant

Derrick Grant

Phone: [\(856\) 505-9559](tel:(856)505-9559)

Email: derricktheprofit@gmail.com

Website: <https://powur.com/highpointsolar>



If you have questions or need help, don't hesitate to contact our support team!

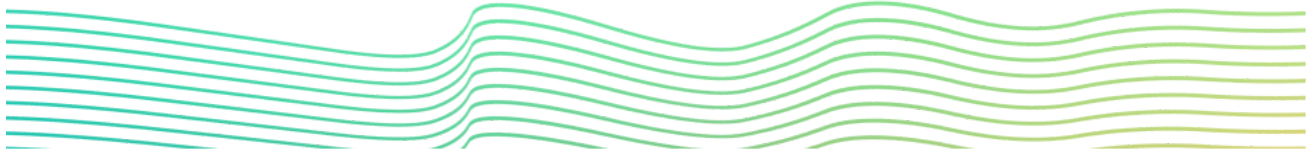
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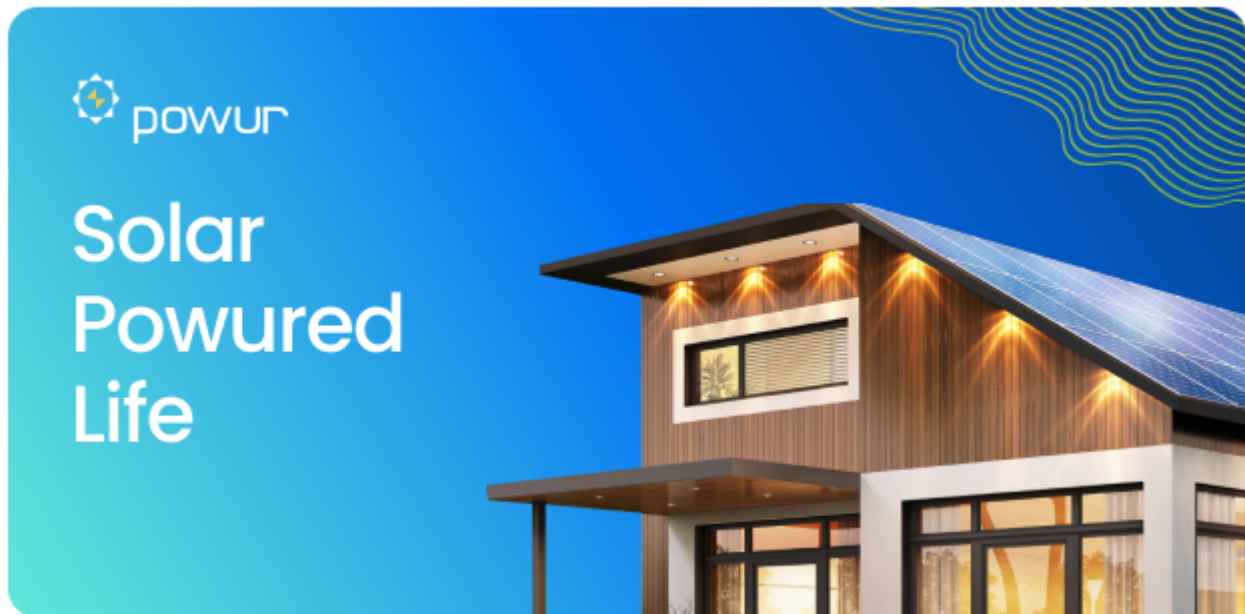
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Why Partner With Powur?

1 message

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Hey Brandon,

There's a reason why so many homeowners choose Powur. As the fastest growing residential solar company in the US, Powur gives you greater long-term savings, control, and peace of mind than any other option.

Working with Powur is easy — and better for the planet. Here are even more reasons to feel good about going solar with Powur.

Reasons Homeowners Choose Powur



Satisfaction. Don't just take our word for it. Powur is a Certified B Corp with a BBB A+ rating and has earned a spot on the Inc. 5000 list of fastest growing companies three years running, showing our commitment to putting customers and the planet first.



Experienced, local experts. With more than 11,000 installs and counting, our local technicians have the expertise needed to set up the best quality solar systems with the lowest carbon footprint.



Increased savings. Our sellers take the time to create a fully customized solar plan, helping you save as much as possible.



Environmental impact. We're serious about giving back. Our carbon offset program and reforestation efforts in the Amazon rainforest create a cleaner, greener planet.



Flexibility. Whether you choose zero-down financing, a low-interest loan, or cash payment, you'll always find flexible financing, equipment, and storage options.



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It's time for you to start saving money with clean, renewable energy. Contact Ed Zajac to begin your journey today!

The Powur Team



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